

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

KATHY GORZYNSKI,

Complainant,

and

HEARTLAND RESTAURANT CORPORATION  
d/b/a CHEDDAR'S CASUAL CAFÉ,

Respondent.

CHARGE NO(S): 2007CA3733  
EEOC NO(S): 21BA72659  
ALS NO(S): 08-0466

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

Entered this 9<sup>th</sup> day of April 2010

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N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF;	)	
	)	
KATHY GORZYNSKI,	)	
	)	
Complainant,	)	
	)	
and	)	Charge No.: 2007CA3733
	)	EEOC No.: 21BA72659
HEARTLAND RESTAURANT CORPORATION	)	ALS No.: 08-0466
d/b/a CHEDDAR'S CASUAL CAFÉ	)	
	)	
Respondent.	)	Judge Gertrude L. McCarthy

**RECOMMENDED ORDER AND DETERMINATION**

This matter comes before me following a public hearing on damages held on March 24, 2009, after a Default Order against Respondent, Heartland Restaurant Corporation d/b/a Cheddar's Casual Café, was entered on November 12, 2008. Complainant appeared *pro se* and Respondent did not appear.

The Department of Human Rights (Department) is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

**FINDINGS OF FACT**

The findings of fact are from the record and the testimony of Complainant and her witness, Complainant's husband.

1. On January 11, 2006, Complainant was injured at a car dealership when an overhead garage door came down on her.
2. The January 11, 2006 incident (the incident) resulted in brain and back injuries.
3. On October 5, 2007, Complainant filed a Charge with the Department alleging discrimination based on age and handicap.

4. Respondent did not respond to the Charge.
5. On November 11, 2006, a *Default Order* was entered against Respondent.
6. On March 16, 1998, Complainant was hired by Respondent As a waitress.
7. Complainant's began using antidepressants after the incident.
8. On January 12, 2006, Complainant went to a doctor as a result of her injuries.
9. Complainant was off of work for seven days subsequent to the incident.
10. Upon returning to work, Complainant had to be re-taught her job, with help provided by Respondent.
11. Complainant re-learned her job within a week and became a trainer to new waitresses.
12. Complainant has been on pain management medication since 1999 due to prior car accidents.
13. Complainant, at 45 years of age, was the oldest employee of Respondent.
14. Complainant has had 24 managers through her employment with Respondent, all of whom knew of her pain management medication.
15. Upon Complainant's return to work from the incident, she needed help carrying large trays and handling a five-gallon bucket of ice which weighed about 40 pounds.
16. Complainant at that time requested and received help from other servers with the trays and ice buckets.
17. Complainant started going to MedChoice Medical in April of 2006.
18. MedChoice provided therapy , massages and other rehabilitative techniques.
19. Complainant told Michael Hallum (Hallum), General Manager, that she was having a hard time carrying the trays and handling the ice bucket.
20. Complainant also told managers Lowecki and Jason about the difficulty in carrying trays and filling the ice bucket.

21. Complainant was still required to carry large trays if there was no one to help her.

22. If no one else was available, Complainant expected the manager to “take off his apron and carry it for me.”

23. Complainant often closed for Respondent and used to work six nights a week but changed to a five night per week schedule.

24. As a closer, Complainant was responsible for filling the ice bin.

25. If Complainant was unable to fill the ice bin, it would remain unfilled.

26. When Complainant spoke to Hallum he said “do your job” and that Complainant was considered a liability.

27. Complainant received no complaints from customers.

28. Complainant’s primary physician, Dr. Harry Darland, wrote that Complainant was able to perform her job with medication.

29. Complainant presented Hallum with a doctor’s release.

30. The doctor’s release indicated that Complainant used Vicodin at work which was not acceptable to Hallum.

31. Complainant believes there was age discrimination because she “knew too much” and the servers called her “Mom.”

32. The incident caused stress between Complainant, her husband and their children.

33. Complainant worked at DOORS during her employment with Respondent.

34. Complainant continues to work at DOORS taking care of her brain-injured brother.

35. DOORS is a program for brain-injured people.

### **CONCLUSIONS OF LAW**

1. Complainant is an “aggrieved party” and Respondent is an “employer” as

these terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-1-3(B) and 5/1-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accordance with the *Default Order* entered on November 12, 2008, Respondent is liable for violations of the Illinois Human Rights Act that prohibit discrimination based on age and handicap.

4. Complainant has not proven actual damages based on her claim of age discrimination.

5. Complainant has proven actual damages based on her claim of handicap discrimination.

### **DISCUSSION**

#### **Damages**

The Illinois Human Rights Act (Act) provides that the Commission may, after a finding of a violation of the Act, issue an award for Respondent to pay actual damages as reasonably determined by the Commission. See **Sanders and Citgo Gasoline Station**, IHRC, 11873, June 23, 2003. The purpose of an award of damages is to make the complainant whole. See **775 ILCS 5/8A-104(J)** and **Littleton and Overnite Express Co.**, IHRC, 10850R, August 22, 2005.

At the public hearing, Complainant provided no evidence of actual damages. Complainant testified that she made "over \$8,000.00 in tips." (Tr. p. 45.) She did not provide a time frame for that allegation. Additionally, Complainant seeks three weeks vacation pay for "whenever the federal minimum wage is." (Tr. p. 45.) Complainant further testified that in 2006 she worked 8 months and made "over \$23,000." (Tr. p. 48.) Complainant also claimed that she made \$400.00 per week in tips. (Tr. p. 48)

Complainant asks for compensation for pain and suffering in the amount of \$100,000.00 in addition to the above. (Tr. p. 50.)

Complainant's husband testified that her personality changed after the incident.

Complainant obtained a finding of liability by default against Respondent. As a result of the default, based upon Respondent's failure to respond to the Charge, the allegations of the Charge are deemed admitted. See **775 ILCS 5/7A102(B)** and **Cruz and Architrade, Inc.**, IHRC, 9992, December 10, 1997. In the Charge, Complainant alleges that Respondent failed to accommodate her doctor's restrictions of no lifting of heavy trays or heavy ice buckets. She further states that her handicap does not impair her ability to perform the essential functions of her job. Complainant further alleges age discrimination in that she was discharged "because I looked too sickly."

The difficulty in this case is computing Complainant's damages. Complainant acknowledges a brain injury which limits her ability to respond to specific questions and further limits her ability of recall. Complainant could have provided W-2 forms to bolster her testimony of lost wages. She failed to do so. Complainant's only evidence of lost wages and lost vacation was her testimony which was sketchy at best.

Often, a calculation of back pay can be somewhat speculative. Ambiguities in this process must be resolved in favor a prevailing party, and against the discriminating employer, since the employer's wrongful act gave rise to the uncertainty. **Clark v. Human Rights Commission**, 141 Ill. App. 3d 178, 490 N.E.2d 29, 95 Ill. Dec. 556 (1<sup>st</sup> Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way. **Kleinfeldt and Blackberry Café d/b/a Mother's Pancake House or B & G Restaurant Corp.**, IHRC, 06-247, June 13, 2007. See also **Taylor and Amerienviromental, Inc.**, IHRC, 11722, February 23, 2004.

Although Complainant's testimony was not as clear as I would have wished on the issue of damages, Respondent's failure to respond to the Charge must be

considered. Also, although I consider Complainant's testimony regarding damages somewhat unreliable, I cannot discount certain aspects of her testimony.

As a waitress, Complainant was required to take orders, carry trays and pre-bus tables. (Tr. pp. 18-19, 35-36.) When Complainant closed, she was also required to fill the ice bin. (Tr. p. 22.) It is unclear what accommodations could have been made by Respondent to meet Complainant's needs. As Respondent's testimony is not before me, I can only glean from Complainant's testimony that, at best, Respondent was not as responsive to her medical condition as it could have been.

In addition to lost wages, Complainant also requests compensation for her emotional distress in the amount of \$100,000 which she testified was suffered due to the discriminatory actions of Respondent.

It has long been established that the Commission's statutory authority to award a prevailing complainant his or her actual damages includes the ability to award monetary damages for emotional distress. **Village of Bellwood v. Illinois Human Rights Commission**, 184 Ill. App. 3d 339, 355, 541 N.E.2d 1248, 133 Ill. Dec. 810 (1<sup>st</sup> Dist. 1989). Although there is no question of the emotion distress caused to Complainant as a result of the January 11, 2006 incident, Complainant provided no testimony of the emotional distress resulting from Respondent's discriminatory actions. The degree of emotional distress to which Complainant testified was not significantly over and above that which would be expected from "the mere fact of a civil rights violation" and is, therefore, not compensable under the Act. **Harris and Vinylarain Industries of Illinois**, IHRC, 11382, August 1, 2001.

From the testimony provided by Complainant, I am unable to find any damages for age-related discrimination in violation of the Act.

From the testimony provided by Complainant, I find that she has not met the burden of sustaining an award of emotional damages based upon Respondent's discriminatory actions.

I find that Complainant's testimony supports an award of damages based on handicap discrimination in violation of the Act. Respondent had failed to adequately accommodate Complainant's physical condition. In the case before me, Respondent was in a position to provide accommodation for Complainant's physical condition upon her return to work. I find Respondent's accommodation measures lacking in giving Complainant the support necessary for her to function in her position as waitress. Respondent failed to accommodate Complainant adequately where heavy lifting was required with large trays and filling of the ice bin when she closed Respondent's restaurant.

I, therefore, find that Complainant has sustained actual damages based upon handicap discrimination in violation of the Act in the amount of \$1,000.00 for its failure to reasonably accommodate Complainant's handicap.

#### **RECOMMENDATION**

It is recommended to the Commission that:

1. Complainant be awarded \$1,000.00 in actual sustained damages for the reasons set forth above.

HUMAN RIGHTS COMMISSION

By: \_\_\_\_\_  
GERTRUDE L. MCCARTHY  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: July 2, 2009